

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION**

**TUNG & DAO, LLC d/b/a ANH DAO  
MARKET  
Plaintiff,**

**v.**

**WILSHIRE INSURANCE COMPANY  
Defendant.**

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**CIVIL ACTION NO. \_\_\_\_\_  
JURY DEMANDED**

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**DEFENDANT WILSHIRE INSURANCE COMPANY'S  
NOTICE OF REMOVAL**

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TO THE HONORABLE COURT:

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant Wilshire Insurance Company, in Cause No. 200812, pending in the 172<sup>nd</sup> District Court of Jefferson County, Texas, files this Notice of Removal from that court to the United States District Court for the Eastern District of Texas, Beaumont Division, on the basis of diversity of citizenship and respectfully shows:

**I. FACTUAL BACKGROUND**

1.1 On or about October 13, 2017, Plaintiff filed its Original Petition in the matter styled *Tung & Dao, LLC d/b/a Anh Dao Market v. Wilshire Insurance Company*, in the 172<sup>nd</sup> District Court of Jefferson County, Texas, in which Plaintiff made a claim for damages to his home under a homeowner's insurance policy.

1.2 Plaintiff served Wilshire with process and Plaintiff's Original Petition on October 24, 2017.

1.3 Plaintiff's Original Petition states that on or about October 14, 2015, Plaintiff's property sustained damages as the result of a fire. Plaintiff subsequently filed a claim on her insurance policy. *See* Pl.'s Original Pet. at ¶ 2.

1.4 Plaintiff's petition states that the damages were covered under the insurance policy Plaintiff bought from Defendant. *See id.* at ¶¶ 2.3.

1.5 The Index of Matters Being Filed is attached as Exhibit A to this Notice of Removal. The List of All Parties is attached as Exhibit B. A copy of the Jefferson County District Clerk's file for this case is also attached as Exhibit C and includes true and correct copies of all executed process, pleadings, and orders. The Complete List of Attorneys is attached as Exhibit D. Attached as Exhibit E is Defendant Wilshire Insurance Company's Demand for Jury Trial. The State Court Information from which the case is being removed is attached as Exhibit F.

## **II. BASIS FOR REMOVAL**

2.1 Removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332, 1441(a) and 1446.

### **A. Complete diversity exists between Plaintiff and Palomar.**

2.2 At the time the lawsuit was filed, Plaintiff was a resident of the State of Texas. *See* Pl.'s Original Pet. at ¶ 1.

2.3 Defendant Wilshire is incorporated as a North Carolina-domiciled insurance company, and has its principal place of business in North Carolina. Accordingly, Wilshire is not a citizen of Texas.

2.4 Because Plaintiff is a citizen of Texas and Wilshire, a foreign defendant, is the only defendant in this action, there is complete diversity between the parties. As such,

removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332(a)(1), 1441(a), and 1446.

**B. The amount of damages prayed for by Plaintiff exceeds the amount in controversy required to confer diversity jurisdiction on this Court.**

2.5 Federal courts have subject matter jurisdiction over actions between citizens of different states in which the amount in controversy exceeds \$75,000. 28 U.S.C. §1332(a)(1); *Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 882 (5th Cir. 2000). Generally, an amount in controversy for the purposes of establishing federal jurisdiction is determined by the plaintiff's complaint. *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1411-12 (5th Cir. 1995).

2.6 In their petition, Plaintiff expressly states that it "seeks monetary relief over \$200,000 but not more than \$1,000,000" *See* Pl.'s Original Pet. at ¶ 2.

2.7 Because Plaintiff has prayed for damages in excess of \$75,000, this case may be properly removed to federal court.

**III. THE REMOVAL IS PROCEDURALLY CORRECT**

3.1 Defendant Wilshire was first served with Plaintiff's Original Petition and process on October 24, 2017. Thus, by filing its Notice of Removal and accompanying documents on this date, Defendant Wilshire files its Notice of Removal within the thirty-day time period required by 28 U.S.C. §1446(b).

3.2 Venue is proper in this District and Division under 28 U.S.C. §1446(a) because this District and Division include the county in which the state action has been pending and because a substantial part of the events giving rise to Plaintiff's claims allegedly occurred in this District and Division.

3.3 Pursuant to 28 U.S.C. §1446(d), promptly after Wilshire files this Notice, written notice of the filing will be given to Plaintiff, the adverse party.

3.4 Pursuant to 28 U.S.C. §1446(d), a true and correct copy of this Notice of Removal will be filed with the Clerk of the Jefferson County District Court, promptly after Wilshire files this Notice.

#### **IV. CONCLUSION**

4.1 Based on the foregoing, the exhibits submitted in support of this Notice, and other documents filed contemporaneously with this Notice and fully incorporated herein, Defendant Wilshire Insurance Company hereby removes this case to this Court for trial and determination.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Mikell A. West, certify that on November 20, 2017, a copy of Defendant Wilshire Insurance Company's Notice of Removal was *electronically filed* on the CM/ECF system, and will be served on the following attorney in charge for Plaintiff, Tung & Dao, LLC d/b/a Anh Dao Market:

**VIA CM/RRR # 7015 1730 0001 4976 7798**

Phong Vo  
P.O. Box 541328  
Houston, Texas 77254

By: /s/ Mikell A. West  
Mikell A. West